

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Gross	)	Art Unit: 3625
	)	
Serial No.: 10/770,937	)	<u>Examiner: Rosen, Nicholas</u>
	)	
Filed: 02/2/2004	)	
	)	
For: <i>Method of providing access to playable media</i>	)	

**Appeal Brief filed under 37 C.F.R. § 1.192**

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Per 37 C.F.R. § 41.37 Appellants submit the present Appeal Brief in furtherance of the Notice of Appeal filed in this case on December 11, 2007.

Please charge any fees in accordance with the accompanying Transmittal letter. A short introduction of the prosecution history is first presented. This brief also contains the following sections as required by 37 C.F.R. § 41.37 and MPEP § 1206:

- I. Real Party In Interest
- II. Related Appeals and Interferences
- III. Status of Claims
- IV. Status of Amendments
- V. Summary of Claimed Subject Matter
- VI. Grounds of Rejection to be Reviewed on Appeal
- VII. Grouping of Claims
- VIII. Argument
- IX. Claims
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- Appendix A Claims

## BRIEF INTRODUCTION AND REVIEW OF PROSECUTION HISTORY

This brief is presented in support of the Notice of Appeal filed for application serial no. 10/770,937 filed February 2, 2004. The present application is based on a provisional application serial no. 60/443,940 filed January 31, 2003.

Originally filed claims 1 – 36 were rejected under 35 USC §103 in a first Office Action mailed October 11, 2006.<sup>1</sup> Claims 1 – 35 were rejected in light of Hastings (US Patent No. 6,584,450) in view of Ostrom (an article titled “New Releases, Netflix users Can Anticipate a Very Long Wait”). Claim 36 was rejected under 35 USC §103 in light of Hastings and Office Notice.

The rejections were then addressed by an Amendment & Response A filed April 11, 2007. The claims were amended to distinguish over the references of record.

In a second/Final Office Action mailed July 11, 2007 the Examiner repeated the §103 rejection of the independent claims (1, 35 and 36) based on Hastings et al./Ostrom and/or Official Notice. A new reference – Kolawa (U.S. Patent No. 6,370,513) was cited with Hastings and Official Notice against independent claim 36.

Some of the dependent claims were rejected in light of new references cited: Raphel et al. (US Publication No. 2003/0023743) (claim 5); Berstis (U.S. Patent No. 6,105,021) (claim 6); Postelnik et al. (U.S. Publication No. 2006/0218054) (claims 9, 10, 11); Jacobi (U.S. Patent No. 6,317,722) (claim 12); Davis (U.S. Patent No. 6,105,006) (claim 13); Nakagawa (U.S. Publication No. 2002/0046129) (claim 14); Kamel et al. (U.S. Publication No. 2001/0014145) (claim 16). Official Notice was newly applied to claims 20, 21, 25 26, 27, 32, 33, 34.

The Applicant now appeals this latest rejection.

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<sup>1</sup> The claims were also rejected under provisional double patenting, but this issue has been resolved and is not part of this appeal.

**I. REAL PARTY IN INTEREST**

John Nicholas Gross, residing at 3883 18<sup>th</sup> Street, San Francisco, CA 94114.

**II. RELATED APPEALS AND INTERFERENCES**

There are no other appeals, interferences or judicial proceedings known to Appellant, Appellant's legal representative, or the Assignee of the present application which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

**III. STATUS OF CLAIMS**

Claims 1 – 36 are pending. Claims 1, 35 and 36 are independent. A complete copy of the pending claims is provided in Appendix A.

**IV. STATUS OF AMENDMENTS**

Appellant has not filed any further amendments since the July 11 Office Action.

**V. SUMMARY OF CLAIMED SUBJECT MATTER**

Independent claim 1

Independent claim 1 covers:<sup>2</sup> A method of distributing playable media items over an electronic network (*FIG. 7, 702*) from a first computer maintained by a provider of a media distribution service (*FIG. 7, 720*) to a second computer used by a subscriber of such service (*FIG. 7, S1, S2, ...*) the playable media items corresponding to machine readable media readable by a subscriber machine player (*page 6, ll. 4 – 17*), the method comprising the steps of:

(a) setting up a subscriber delivery queue for the subscriber to be controlled by the first computer, said subscriber delivery queue consisting of an ordered list of one or more playable media items to be delivered to the subscriber in a subscriber-defined priority; (*FIG. 1, see region 110 and text at page 7, ll. 16 – page 8, l. 32 regarding prioritization*)

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<sup>2</sup> In the interest of efficiency and clarity Applicant has not identified every single aspect of the disclosure which may pertain to the claimed limitations.

wherein said subscriber delivery queue is set up at least in part in response to item selection directions provided by the subscriber over the network using the second computer; (*id*)

(b) setting up queue replenishment control rules for the subscriber delivery queue; (*FIG. 1, portion 116 of interface; FIG. 2, and description at page 10, l. 17 – page 16, l. 7*) and

(c) monitoring said subscriber delivery queue in accordance with said queue replenishment control rules to automatically determine with said first computer if an additional playable media item should be added to said subscriber delivery queue; (*FIG. 4 and description at page 18, l. 28 – page 21, l. 22*); and

(d) automatically modifying said subscriber delivery queue with said first computer to generate a new ordered list of one or more playable media items in response to the subscriber confirming that said additional playable media item can be included in said subscriber delivery queue; (*FIG. 4 and description at page 18, l. 28 – page 21, l. 2, particularly box 485; also FIGs. 3A – 3C for format of explicit confirmations*)

wherein said subscriber delivery queue is maintained automatically for the subscriber so as to include at least one playable media item which could be delivered to such subscriber. (*Id; see particularly boxes 430 (trigger event); box 435 (recommendations); 450 (autoship); and discussion at page 12, l. 2 - page 13, l. 3; page 17, l. 24 – page 18, l. 25*)

#### Independent claim 35

Claim 35 covers a method of distributing playable media items comprising the steps of:

(a) setting up a subscriber selection queue for the subscriber, said subscriber selection queue consisting of a list of one or more playable media items to be viewed by the subscriber;

wherein said subscriber selection queue is set up at least in part in response to item selection directions provided by the subscriber; (*FIG. 1, see region 110 and text at page 7, ll. 16 – page 8, l. 32 regarding how subscriber sets up list*)

(b) setting up queue replenishment control rules for the subscriber selection queue; and (*FIG. 1, portion 116 of interface; FIG. 2, and description at page*

10, l. 17 – page 16, l. 7)

- (c) automatically monitoring said subscriber selection queue in accordance with said queue replenishment control rules to automatically determine with a first computing system if changes should be made to said subscriber selection queue; (*FIG. 4 and description at page 18, l. 28 – page 21, l. 22*);

wherein said monitoring includes analyzing the content and/or characteristics of other playable media items within said subscriber selection queue to determine said changes; and (*id*; also description of threshold options #2 and #3 on page 13);

- (d) automatically modifying said subscriber selection queue with said first computing system to generate a new list of one or more playable media items based on a confirmation from the subscriber; (*FIG. 4 and description at page 18, l. 28 – page 21, l. 2, particularly box 485; also FIGs. 3A – 3C for format of explicit confirmations*)

wherein said subscriber selection queue is maintained automatically for the subscriber to include at least one playable media item which could be delivered to such subscriber. (*Id*; see particularly boxes 430 (trigger event); box 435 (recommendations); 450 (autoship); and discussion at page 12, l. 2 - page 13, l. 3; page 17, l. 24 – page 18, l. 25)

#### Independent claim 36

Claim 36 covers a method of distributing playable media items over an electronic network to a subscriber of a media rental service (*see FIG. 7*), the method comprising the steps of:

- (a) receiving subscriber preference data for the subscriber during a first data session, including notification and shipment options; (*FIG 1; region 116 and related discussion; FIG. 2, see regions 230 and 250 and related text at page 14, l. 6 – page 16 l. 10*)
- (b) generating a subscriber profile for the subscriber suitable for use by a recommender system; (*id and also FIG. 6 and related discussion at page 23, ll. 15+*)
- (c) processing said subscriber profile using said recommender system to identify

- a media item that is likely to be of interest to the subscriber; (*id*; see also FIG. 4, box 435 and related discussion)
- (d) notifying the subscriber and shipping said media item to the subscriber in accordance with said subscriber preference data; (FIG. 4 and description at page 18, l. 28 – page 21, l. 2, particularly box 485; also FIGs. 3A – 3C for format of explicit confirmations)
- wherein said media item can be automatically shipped to the subscriber after said first data session, and without requiring a second data session by the subscriber with said media rental service; (*id* see particularly discussion for autoship option 230 (FIG. 2) and decision box 450 (FIG. 4) and options available in email embodiments 3A – 3C (*i.e.*, box 330))
- (e) repeating step (c) to automatically select and maintain at least one additional media item to be available for immediate delivery to the subscriber at all times; (*Id*; see particularly boxes 430 (trigger event); box 435 (recommendations); 450 (autoship); and discussion at page 12, l. 2 - page 13, l. 3; page 17, l. 24 – page 18, l. 25)
- (f) enabling the subscriber to accept delivery of said at least one additional media item and/or select another media item. (*id*; see specifically options made available to member in FIGs. 3A to 3C, particularly option box 330 and 350)

These features and others are described in more detail below.

## VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The issues presented for appeal are whether:

- Independent claims 1, 35 and dependent claims 2, 3, 4, 7, 8, 15, 17, 18, 19, 22, 23, 24, 28, 29, 30 and 31 are unpatentable under § 103 in light of Hastings et al (U.S. Patent No. 6,584,450) taken with Ostrom; and whether:
  - Dependent claim 5 is unpatentable under § 103 in light of the above and further in view of Raphel et al. (US Publication No. 2003/0023743);
  - Dependent claim 6 is unpatentable under § 103 in light of the above and further in view of Berstis (U.S. Patent No. 6,105,021);
  - Dependent claims 9, 10, 11 are unpatentable under § 103 in light of the above and further in view of Postelnik et al. (U.S. Publication No. 2006/0218054);
  - Dependent claim 12 is unpatentable under § 103 in light of the above and further in view of Jacobi (U.S. Patent No. 6,317,722);
  - Dependent claim 13 is unpatentable under § 103 in light of the above and further in view of Davis (U.S. Patent No. 6,105,006);
  - Dependent claim 14 is unpatentable under § 103 in light of the above and further in view of Nakagawa (U.S. Publication No. 2002/0046129);
  - Dependent claim 16 is unpatentable under § 103 in light of the above and further in view of Kamel et al. (U.S. Publication No. 2001/0014145);
  - Dependent claims 20, 21, 25 26, 27, 32, 33, 34 are unpatentable under § 103 in light of the above and further in view of Official Notice;
- Independent claim 36 is unpatentable under § 103 in light of Hastings et al (U.S. Patent No. 6,584,450) taken with Kolawa (U.S. Patent No. 6,370,513) and Official Notice.

## **VII. GROUPING OF CLAIMS**

Except where noted below, the claims do not stand or fall together because they are directed to different facets of the present inventions and/or are more particularly directed to specific features of such inventions. A detailed discussion of such differences is given below.

## **VIII. ARGUMENT**

The present invention relates, in general, to the field of electronic commerce systems and methods of providing selections, shipments and exchanges of rental items. In conventional contemporary systems, such as implemented at a popular website maintained by Netflix® (and Blockbuster®), subscribers can search, review and select movie titles (in DVD media format) within a graphical interface. If a particular title is available, the subscriber's choice is then placed into a rental selection "queue" maintained by a server. During an interactive online session, a subscriber can select a number of titles, and then prioritize them in a desired order for shipment within the selection queue.

After the movie title selection session is over, the system proceeds to ship the desired titles in the order requested by the subscriber. After shipment, these titles then appear in a separate list identified essentially as items that are outstanding (i.e., movies that have not yet been returned by the user) within a "titles out" or shipped queue.

One main known deficiency of these commercial systems is that the user is required to periodically visit and replenish his/her selection queue in order to maintain a steady supply of content. This requires the user to initiate another session with the provider's website, log in to their account, view their queue, parse potential titles for inclusion in the selection queue, etc. If the user does not continually place movies into the selection queue, it is possible that he/she will receive the last movie in their queue and then not receive another title because an express selection was not made. This is especially disadvantageous for DVD rental by mail systems, since there is a mailing time lag which the user cannot cure retroactively. In other words, if the user notices a few days later that their selection queue is empty, it will still take a few days to process and deliver any new selection that the user may make on that particular day. Since the



bulk of subscribers are on a fixed payment plan, meaning that they pay the same amount whether they see X or X+1 titles per billing period, and each title costs them \$\$ to ship, the disclosure pointed out that the commercial operators of such systems had little or no economic incentive to reminder users that they are under-utilizing their accounts.

The claims of the present application are addressed to this deficiency in the prior art.

#### Independent claim 1

The Examiner cited to the combination of U.S. Patent No. 6,584,450 to Hastings and Ostrom above as making the present claims obvious. In the prior Office Actions the Examiner conceded that Hastings did not teach limitation (d), namely:

**....automatically modifying said subscriber delivery queue with said first computer to generate a new ordered list of one or more playable media items in response to the subscriber confirming that said additional playable media item can be included in said subscriber delivery queue**

To fill in this missing piece of the claim, the Examiner cited to Ostrom. This reference does not appear in fact to teach the above limitation, so as an initial point the present argument notes that the rejection is improper for this reason.

Ostrom merely explains the state of affairs in this technology in June 2002; namely, that subscribers had to constantly monitor and adjust their queues – on their own during an interactive data session – to make sure that they received new titles. Thus Ostrom says nothing about *automatically* determining whether an “additional playable media item” should be added to the queue. It is merely repeating the fact that subscribers could add such items manually as is already disclosed in Hastings.

Similarly Ostrom does not “automatically” modify the subscriber queue, this is something that user must do on their own again.

But there is at least one more significant problem with the main reference (Hastings) as well that was not addressed in the prior Office Actions. To wit, Hastings does not disclose a method for:

**.....monitoring said subscriber delivery queue in accordance with said queue replenishment control rules to automatically determine with said first computer if an additional playable media item should be added to said subscriber delivery queue**

In other words, the “additional playable media item” must be automatically determined based on “monitoring” the subscriber delivery queue. Hastings in fact makes no mention anywhere of “monitoring” the subscriber’s queue and using such information to determine an additional playable media item. He merely *fills* the queue with items which are from manual selections or with items automatically based on subscriber selection criteria (see below). But the latter items are not based on any act of monitoring the subscriber delivery queue as recited in claim 1.

Nor does Hastings teach:

**....wherein said subscriber delivery queue is maintained automatically for the subscriber so as to include at least one playable media item which could be delivered to such subscriber.**

The Examiner’s review of Hastings led him to believe that this type of operation is “....obvious and implied” (see July 11 Office Action bottom of page 3) from Hastings’ description that customers can provide movie selection criteria which then cause the system to send them movies. But the Examiner is reading too much into the cited passages from Hastings (col. 9, ll. 47 – col. 10, l. 14; col. 11, l. 49 – col. 13, l. 53; col. 8, l. 6 – col. 9, l. 39). These sections say nothing in fact about attempts to ensure that the subscriber’s queue is automatically maintained to include at least one playable media item. Without this feature, Hastings’ system also fails to address or solve the problem of customer dissatisfaction based on a lack of receipt of content.

As a simple example, Hastings says the “...movie selection criteria may specify a preference for action movies starring a particular actor, with a preference for “new release” movies.” But, as one can plainly envision, there will be many occasions in which there are no movies that satisfy such criteria, yet Hastings makes no mention of how to address this dilemma. In other cases even if there is a title that meets the subscriber’s criteria, it may be unavailable or allocated to another user.

In short, Hastings does not in fact teach maintaining a queue “automatically” for the subscriber to ensure a steady delivery of titles. This shortcoming is hardly surprising since the inventor of Hastings is one of the founders of Netflix, and the latter service,

discussed above, suffered from the same defect for several years prior to the present filing.<sup>3</sup>

Given that both the references do not teach the limitations which they are cited for, Applicant submits that they cannot render claim 1 obvious.

#### Independent claim 35

This claim should be allowable for at least the same reasons as claim 1. Moreover this claim states that the monitoring is done automatically and includes “... analyzing the content and/or characteristics of other playable media items within said subscriber selection queue...” to determine what changes should be made, if any to the same. Against this limitation the Office Action states merely that:

“...it is likewise obvious for the monitoring to include analyzing the content and/or characteristics of other playable media items within the selection queue to determine the changes, so as to accomplish the disclosed purpose of provide (sic) the subscriber with movies according to his selected criteria, as taught by Hastings.” See page 14 of the July 11, 2007 Office Action.

Applicant submits that this single conclusory sentence is not sufficient evidence to reject this claim for obviousness. As stated in MPEP, the Examiner’s rejection based on prior art should provide Applicants with more reasons:

Where a major technical rejection is proper, it should be stated with a full development of reasons rather than by a mere conclusion coupled with some stereotyped expression. MPEP ( 707.07(g).

Applicant’s review finds no mention in Hastings of examining other items in the selection queue as part of a monitoring process, or even for determining what titles to send to a subscriber. The only criteria noted by Hastings are parameters for movies given by the subscriber, which are never then associated with other titles within the subscriber’s queue. This limitation is also not taught or suggested in the prior art, and is yet another reason why this claim should be allowed.

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<sup>3</sup> As noted in the IDS filed October 17, 2007, Netflix has now apparently recognized the value of this type of feature and uses it in their commercial operations as well.

### Independent claim 36

This claim should be allowable for at least the same reasons as claims 1 and 35. Kolawa et al. is only cited for the proposition that it was well known to accept or reject delivery of items – See Office Action, page 16. However it does not address any of the deficiencies in the main limitations, as noted above, so it is not sufficient to render claim 36 unpatentable.

Moreover the Applicant further submits that the Examiner's contention concerning Hastings disclosing a “recommender system” is apparently inaccurate. Hastings makes no mention of a recommendation system as far as Applicants can determine. It merely describes that it receives user criteria on movies and provides movies per such criteria. There is no hint or suggestion of a system that gives “recommendations” to users.

### Dependent claims 2 – 34

Applicant does not argue the separate patentability of claims 2, 3, 5, 6, 7, 8, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 and 34, but believes they should be allowable nonetheless for the reasons set forth above for claim 1. For the remaining claims:

Claim 4: Ostrom is not referring to an *additional* playable media item; it is referring to re-arranging a *preexisting* item in the subscriber's queue, or letting the subscriber add something manually. Thus, it does not teach permitting the subscriber to define the automatic insertion point of a new item.

For claim 9: Applicant finds no mention in Postelnik of notices for a subscriber delivery queue. If the PTO is apply KSR consistently, then it must take into account the fact that the Netflix commercial service existed for several years, and if the economic incentive was so great to include the kind of notification functionality that is described in claim 9, then it surely would have manifested itself prior to the Applicant's invention of claim 9. Yet, as the record show, such did not occur. Thus, this is far more persuasive evidence of non-obviousness than the current conclusory rejection. The same is true for claims 10, 11.

For claims 12, 14 and 15 again, the prior art may teach individual features of these claims, but fails to teach or suggest them in combination as set out in these dependent claims. As noted earlier, the economics of this industry explicitly taught away from the present inventions. Content providers were not interested in alerting customers to more titles in the DVD rental field, since such offerings would cost them money to ship under their membership contracts. Thus, even if the prior art taught generic "notices" to customers, there was no incentive or suggestion to include such in systems which practice the present claims.

Similarly for claim 13: the argument based on the Davis reference is traversed, because it makes no mention of working with a queue, or delivery of titles, and thus does not operate as the claim recites.

For claim 16: see above; the Applicant traverses the arguments based on the Kamel reference. Kamel makes no mention or reference anywhere to a queue, playable media items, etc., etc. It is only referenced because it mentions a queue in connection with an electronic message machine. The reference is at best, tangential and provides no suggestion or even a hint to a skilled artisan to modify a system like Hastings to incorporate like functionality.

Again it can be easily verified that commercial services for media rentals at the time of the filing of the invention did not offer such functionality. In fact, for reasons which are readily apparent, such services may have believed it was more economically advantageous to not inform subscribers of deficiencies in their queues, again, teaching away from the invention of claim 16.

Claims 17, 19: it is unclear whether Hastings discloses a recommender system, but it certainly does not describe that such system automatically adds titles to the subscriber's queue. Furthermore, Hastings says nothing about bumping a recommended title to the top of the queue, as set out in claim 18.

**IX. CLAIMS**

A copy of the claims involved in the present appeal is attached hereto as Appendix A.


**X. EVIDENCE**

No additional evidence pursuant to §§ 1.130, 1.131 or 1.132 or entered by or relied upon by the Examiner is being submitted.

**XI. RELATED PROCEEDINGS**

No related proceedings are referenced herein, nor are copies of decisions in related proceedings being provided, as there are none. Accordingly, no Appendix is included.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Nicholas Gross". The signature is fluid and cursive, with the first name "J." being small and the last name "Gross" being larger and more prominent.

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## APPENDIX A

1. A method of distributing playable media items over an electronic network from a first computer maintained by a provider of a media distribution service to a second computer used by a subscriber of such service, the playable media items corresponding to machine readable media readable by a subscriber machine player, the method comprising the steps of:

(a) setting up a subscriber delivery queue for the subscriber to be controlled by the first computer, said subscriber delivery queue consisting of an ordered list of one or more playable media items to be delivered to the subscriber in a subscriber-defined priority;

wherein said subscriber delivery queue is set up at least in part in response to item selection directions provided by the subscriber over the network using the second computer;

(b) setting up queue replenishment control rules for the subscriber delivery queue; and

(c) monitoring said subscriber delivery queue in accordance with said queue replenishment control rules to automatically determine with said first computer if an additional playable media item should be added to said subscriber delivery queue; and

(d) automatically modifying said subscriber delivery queue with said first computer to generate a new ordered list of one or more playable media items in response to the subscriber confirming that said additional playable media item can be included in said subscriber delivery queue;

wherein said subscriber delivery queue is maintained automatically for the subscriber so as to include at least one playable media item which could be delivered to such subscriber.

2. The method of claim 1, wherein the subscriber does not need to be connected to the provider over the network during step (c).

3. The method of claim 1 wherein said ordered list of one or more playable media items are set up by said subscriber-defined priority in a delivery sequence ranging from a first playable media item to be delivered from said subscriber delivery queue to a last playable media item to be delivered from said subscriber delivery queue.
4. The method of claim 3, wherein said additional playable media item is automatically inserted in a subscriber-defined delivery order position in said new ordered list of one or more playable media items.
5. The method of claim 3, wherein said additional playable media item is automatically inserted as said first playable media item to be delivered from said new ordered list of one or more playable media items.
6. The method of claim 3, wherein said additional playable media item is automatically inserted as said last playable media item to be delivered from said new ordered list of one or more playable media items.
7. The method of claim 1, further including a step of: delivering playable media items to the subscriber based on said new ordered list of one or more playable media items.
8. The method of claim 1, wherein step (d) is performed automatically without sending a further notification to the subscriber.
9. The method of claim 1, further including a step (c)': sending a notification to the subscriber after step (c) when said queue replenishment control rules determine that said subscriber delivery queue should be modified.
10. The method of claim 9, wherein said notification does not automatically trigger a modification of said subscriber delivery queue.
11. The method of claim 9, wherein said notification specifies that said subscriber delivery queue will be automatically modified in accordance with said queue replenishment control rules.



12. The method of claim 9, wherein said notification specifies that said subscriber delivery queue will be automatically modified in accordance with said queue replenishment control rules and includes an embedded uniform resource links (URL) or an electronic response field in said electronic notification so as to allow the subscriber to review playable media title recommendations from said recommender system.
13. The method of claim 12, wherein said subscriber delivery queue is automatically modified in accordance with said queue replenishment control rules after a predefined time delay.
14. The method of claim 9, wherein said notification provides directions for the subscriber to accept and/or modify said additional playable media item.
15. The method of claim 1, wherein said queue replenishment control rules include a trigger event to be used in determining when said subscriber delivery queue should be modified.
16. The method of claim 15, wherein said trigger event is associated with a quantity of playable media items remaining in said subscriber delivery queue.
17. The method of claim 15, wherein said trigger event is associated with a determination by an item recommendation system that said additional playable media item should be added to said subscriber delivery queue as a recommended playable media item.
18. The method of claim 17, wherein said recommended playable media item is designated as the next to be delivered from said subscriber delivery queue.
19. The method of claim 1, wherein said additional playable media item is automatically determined by a recommender system controlled by the provider of the media distribution service, which recommender system automatically identifies playable media items of interest to the subscriber based on a subscriber item preference profile.
20. The method of claim 19, further including a step of: processing an item rating survey provided by the subscriber to determine a subscriber item preference profile suitable for use by said recommender system.

21. The method of claim 1, wherein said additional playable media item is randomly selected from a list of playable media items associated with a category selected by the subscriber.
22. The method of claim 1, wherein said queue replenishment control rules and the subscriber delivery queue are set up automatically for the subscriber based on an evaluation of item preferences determined for the subscriber.
23. The method of claim 1, wherein said queue replenishment control rules for the subscriber delivery queue are set up by the subscriber.
24. The method of claim 1, further including a step (e): moving an item from said subscriber delivery queue to a shipping queue when the subscriber is eligible to receive an additional item.
25. The method of claim 19, further including a step of: processing an item rating survey provided by the subscriber to determine a subscriber preference profile suitable for use by said recommender system.
26. The method of claim 1, further including a step of: receiving subscriber feedback concerning a performance of said media distribution service ~~concerning~~ concerning selection of said additional playable media item.
27. The method of claim 1, wherein a subscriber account is charged a fee when an additional playable media item is moved to said subscriber delivery queue.
28. The method of claim 1, wherein the media distribution service distributes movies to the subscribers.
29. The method of claim 28, wherein the media distribution service is an Internet based movie rental service, and the playable media items are recordings of movies that are mailed to subscribers.
30. The method of claim 29, wherein the subscriber pays a flat rate service fee for having a predetermined number of recordings checked out of the Internet based movie rental service.
31. The method of claim 30, wherein a subscriber account is charged an additional fee when an additional playable media item is actually distributed to the subscriber.
32. The method of claim 28, wherein said movies are distributed electronically to the subscribers.

33. The method of claim 32, wherein said movies are distributed by a satellite transmission to a satellite signal receiver.
34. The method of claim 32, wherein said movies are distributed by a broadband Internet-based connection.

35. A method of distributing playable media items comprising the steps of:
- (a) setting up a subscriber selection queue for the subscriber, said subscriber selection queue consisting of a list of one or more playable media items to be viewed by the subscriber;  
wherein said subscriber selection queue is set up at least in part in response to item selection directions provided by the subscriber;
  - (b) setting up queue replenishment control rules for the subscriber selection queue; and
  - (c) automatically monitoring said subscriber selection queue in accordance with said queue replenishment control rules to automatically determine with a first computing system if changes should be made to said subscriber selection queue;  
wherein said monitoring includes analyzing the content and/or characteristics of other playable media items within said subscriber selection queue to determine said changes; and
  - (d) automatically modifying said subscriber selection queue with said first computing system to generate a new list of one or more playable media items based on a confirmation from the subscriber;  
wherein said subscriber selection queue is maintained automatically for the subscriber to include at least one playable media item which could be delivered to such subscriber.

36. A method of distributing playable media items over an electronic network to a subscriber of a media rental service, the method comprising the steps of:

- (a) receiving subscriber preference data for the subscriber during a first data session, including notification and shipment options;
- (b) generating a subscriber profile for the subscriber suitable for use by a recommender system;
- (c) processing said subscriber profile using said recommender system to identify a media item that is likely to be of interest to the subscriber ;
- (d) notifying the subscriber and shipping said media item to the subscriber in accordance with said subscriber preference data;  
wherein said media item can be automatically shipped to the subscriber after said first data session, and without requiring a second data session by the subscriber with said media rental service;
- (e) repeating step (c) to automatically select and maintain at least one additional media item to be available for immediate delivery to the subscriber at all times;
- (f) enabling the subscriber to accept delivery of said at least one additional media item and/or select another media item.